

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TONY PENWELL,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

CASE NO. 3:25-cv-05230-RAJ-TLF

ORDER ADOPTING REPORT
AND RECOMMENDATION

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Theresa L. Fricke (Dkt. # 4), all objections thereto¹, and the remaining record, the Court finds and **ORDERS** the following:

¹ Plaintiff filed objections to Judge Theresa Fricke's Report and Recommendation. Dkt. # 5. The Court reviewed the objections and finds that no objection substantively responds to Judge Fricke's legal conclusions regarding Plaintiff's failure to state a claim. Plaintiff does not offer evidence to show that the Washington post-deprivation remedy was inadequate. He fails to allege specific facts demonstrating that the deprivation of his property was foreseeable or was authorized. More importantly, Plaintiff does not distinguish *Joshua v. Newell*, 871 F.2d 884 (9th Cir. 1989) sufficiently. His main contention is that he only received an offer of \$500 to compensate the loss of his property when the alleged true value was at least \$1,150.00. *Id.* at 3–4. His statement that this remedy was “substantially inadequate” is conclusory, as it appears he is simply dissatisfied with the amount offered. Dissatisfaction with the remedy does not equate to the remedy being unconstitutional. There is no evidence provided that documents the value of the items lost. Plaintiff also concedes that the three-strike rule applies, meaning he cannot proceed with this matter *in forma pauperis*. *Id.* at 1.

1 (1) The Report and Recommendation is **APPROVED** and **ADOPTED**. Dkt. #
2 4.

3 (2) The Court finds that Plaintiff has incurred at least three strikes under 42
4 U.S.C. § 1915(g) and has not shown the imminent danger exception applies. Therefore,
5 Plaintiff's Motion to Proceed *in Forma Pauperis* (Dkt. # 1) is **DENIED**. Furthermore,
6 even if Plaintiff paid the filing fee in this action, his Complaint fails to state a claim.
7 Accordingly, the action is **DISMISSED WITHOUT PREJUDICE** for failure to state a
8 claim upon which relief may be granted.
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10 (3) The Clerk is directed to send copies of this Order to Plaintiff and to the
11 Honorable Theresa L. Fricke.

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13 Dated this 11th day of June, 2025.

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16 The Honorable Richard A. Jones
17 United States District Judge
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